



Comptroller General
of the United States

Washington, D.C. 20548

153811

Decision

Matter of: Prose, Inc.
File: B-259016
Date: February 28, 1995

Chris J. Dolloff for the protester.
Virginia Kelly Stephens, Esq., Department of Housing and Urban Development, for the agency.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that incumbent's proposal was not selected for award as a result of one evaluator's alleged bias is denied where: (1) evaluator's statements that allegedly show bias have been reasonably explained in a manner which does not indicate any bias against the protester; and (2) record shows that agency's evaluation of protester's and awardee's proposals was proper.

DECISION

Prose, Inc. protests the award of a contract to Country Manor Realty under request for proposals (RFP) No. H03R94013400000, issued by the Department of Housing and Urban Development (HUD) for real estate area management services (REAMS) of government-owned single family properties located in the Philadelphia, Pennsylvania metropolitan area. Prose, the incumbent REAMS contractor for Area C (Montgomery and Chester Counties), contends that it did not receive contract award for this area because one of the Philadelphia HUD procurement officials was biased against it.

We deny the protest.

On May 6, 1994, the RFP was issued as a total small business set-aside and was sent to 338 prospective offerors; the RFP required offerors to submit both price and technical proposals. For their price proposals, offerors were to complete and submit a pricing schedule with fixed-price estimates for seven geographic areas based on a 1-year contract period with 2 option years, as well as the RFP's "Limited Cost Data" schedule which itemized the required services into their component costs.

For their technical proposals, offerors were to prepare a proposal addressing four evaluation factors: property management experience, construction and procurement related skills, office location and financial/human resources (each worth a maximum of 30 points), and understanding of the contract (maximum 10 points). The RFP provided that award would be made to the offeror submitting the most advantageous proposal and that technical merit was more important than price. The RFP also advised offerors that multiple awards might be made.

By the June 13 closing date, 34 offers were received. On July 1, each offeror's technical proposal was submitted to a three-member source evaluation board (SEB) for review. With respect to Area C, three firms proposals--including Prose's--were included in the competitive range as "capable of being made technically acceptable." By letter dated August 15, the contracting officer requested a best and final offer (BAFO) from Prose in which the protester was asked to "clarify the related experience of Prose, prior to REAMS experience in this Office" and indicate "[w]hat are problems unique to the contract area." The BAFO letter also advised Prose that with respect to one of the subfactors under the construction and procurement related skills evaluation factor, it "did not provide sufficient detail which demonstrates experience in all the required disciplines."

On September 2, Prose submitted its BAFO. Although the SEB raised Prose's proposal evaluation score, Prose's proposal was not selected for contract award for Area C. Instead, Country Manor's proposal was selected, as the highest technically scored, lowest-priced for that area.

On October 7, the contracting officer notified Prose that the Area C contract had been awarded to Country Manor; on October 12, Prose filed an agency-level protest challenging the award. In its agency-level protest, Prose alleged that a Philadelphia HUD official's bias against the firm prevented Prose from receiving award.

On October 14, the contracting officer advised Prose that contrary to Prose's allegations, "all proposals were evaluated in accordance with the RFP requirements and that decisions were not made in an arbitrary and capricious manner." On October 22, Prose filed this protest which reiterates its agency-level grounds.

PROTESTER'S CONTENTIONS

Prose contends that the HUD realty specialist who monitored its performance as the incumbent REAMS contractor for Area C (hereinafter the HUD monitor) was biased against Prose, and

therefore unfairly downgraded Prose's technical proposal. In advancing this argument, Prose maintains that the HUD monitor advised Prose's project manager that: (1) he would "see that Prose Management would not get another bid out of the Philadelphia [HUD] office," (2) that the project manager should "find something else to do" as Prose would be out of business soon, (3) that the Philadelphia REAMS contracts "should go to companies that are local," and (4) that Prose is comprised of "a bunch of carpetbaggers." Prose maintains that these statements demonstrate the HUD monitor's bias against Prose, and that but for the HUD monitor's participation in this procurement, Prose would have received the contract award for Area C.

ANALYSIS

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of mere inference or supposition. See Lancaster & Co., B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319. Where, as here, a protester alleges bias on the part of a procurement official, our focus is on whether the official exerted improper influence in the procurement on behalf of the awardee or against the protester. E.J. Richardson Assoc., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185.

Our Office conducted a hearing in this matter at which the protester, its project manager, the HUD monitor, and an SEB member testified. The issues which were discussed at the hearing included each of the four alleged statements; communications between Prose and the HUD monitor during the firm's performance of the predecessor Area C REAMS contract; and the technical evaluation of Prose's proposal for this procurement. As explained below, based on this testimony, as well as the corroborating written record, we find that the record does not substantiate the protester's claim of bias. Moreover, the record clearly supports the agency's conclusion that Country Manor submitted a technically superior proposal.

Alleged Statements of Bias

Prose has been the incumbent contractor for Area C since December 1991. During this time, Prose--which is located in New Hampshire--has been maintaining its Area C REAMS contract through use of a project manager who is located in Levittown, Pennsylvania. The same Prose project manager has been performing the required Area C REAMS work since 1991.

¹References in this decision to the hearing transcript are identified by "Tr."

The HUD monitor who is alleged to be biased against Prose has been supervising Prose's Area C REAMS performance since the fall of 1992. The REAMS work requires almost daily interaction between the Prose project manager and an assigned HUD monitor. Government-owned residences and properties continually rotate in and out of HUD's custody and inventory--depending on their marketing status--and, as a result, the REAMS contractor is tasked by the HUD monitor to perform various services on an as-needed basis. The required services range from preparing a property for sale to the general public--entailing substantial cleaning and building repair work--to collecting rental fees and responding to general tenant complaints and seasonal property maintenance requirements.

Part of the REAMS work requires the project manager and HUD monitor to travel together through Area C and inspect properties and discuss various REAMS needs, such as repair work and cleanup tasks. During these trips, the HUD monitor allegedly made several statements to the project manager which are discussed below, and which Prose now asserts indicate bias against the firm.

The first statement--that the monitor would see that Prose would not get another contract from the Philadelphia HUD office--was allegedly made in October 1992, after the HUD monitor expressed dissatisfaction with the way the project manager had cleaned up one of the Area C properties. According to Prose, although the project manager tried to explain that the company's delay in cleaning the property was caused by the unforeseeable default of a hired subcontractor, the HUD monitor was dissatisfied with this explanation. After this incident, the record shows that Prose's vice president--located in New Hampshire--contacted the HUD monitor to check on the project manager's performance. (Tr. at 23.) Prose asserts that, although the HUD monitor conveyed that he had encountered difficulties with Prose's performance on the Area C contract, when questioned for more specific details by the Prose vice president, the HUD monitor did not provide any and simply limited his response to advising the Prose vice president to "look at the contract." (Tr. at 33; 145, 175.)

The second and third statements--in which the HUD monitor allegedly advised the project manager to find other employment and also stated that Pennsylvania REAMS contracts should go to local Pennsylvania firms were claimed to have been made 2 years later, in June 1994, during a day trip which the HUD monitor and Prose project manager undertook to inspect various properties that HUD was considering adding to its REAMS inventory. Prose states that, during this trip, the HUD monitor advised the Prose project manager that the Philadelphia HUD office preferred to see local

Pennsylvania companies manage REAMS contracts for that area. In response to this information, the Prose project manager asked the monitor if he should solicit work elsewhere, whereupon the monitor replied, "I guess I would if I were you." (Tr. at 89.)

The fourth statement--wherein the monitor allegedly stated that the Prose firm consisted of "a bunch of carpetbaggers"--was purportedly made during a telephone conversation with the president of Prose, who did not attend the hearing.

At the hearing, the HUD monitor denied that he had made the statement that "Prose would not get another contract" but acknowledged that he had, on occasion, conveyed his professional criticism of Prose's REAMS performance to the Prose project manager; in response to the Prose project manager's testimony, the HUD monitor suggested that his criticism had been misinterpreted by the Prose project manager. (Tr. at 132.) The HUD monitor further testified that he would not threaten to prevent Prose from receiving another HUD contract "since I have no contract authority [and] am in no position to make that kind of statement." (Tr. at 132.)

With respect to the second and third statements, the HUD monitor testified that he believes he has been misunderstood by the Prose project manager. The monitor stated that "as a friend" he advised the project manager not to assume that Prose's incumbent status would automatically ensure that the firm would receive the replacement contract for Area C. (Tr. at 132.) The monitor stated that he made this statement to the project manager based on the project manager's stated concern that if Prose lost the replacement Area C REAMS contract, the project manager would lose his job. The HUD monitor further testified that because he knew the Prose project manager's housing expertise qualified him for another independent contractor position available through the Philadelphia HUD office--and which would not conflict with the project manager's Area C duties--the HUD monitor suggested that the Prose project manager apply for this position, which the project manager successfully did.

At the hearing, the HUD monitor also denied referring to the Prose firm as a "bunch of carpetbaggers" but acknowledged that he generally uses this term to refer to problematic REAMS contractors. (Tr. at 179.)

Based on the hearing testimony, we conclude that the four statements which form the basis for this protest do not establish that the HUD monitor acted here with any bias against Prose. For example, with respect to the first statement--alleging that the monitor asserted that Prose

would never get another contract award--we conclude that even if this statement was made, it was made only as an expression of dissatisfaction with the firm's performance on the particular cleanup task described at the hearing--an event which transpired over 2 years before this procurement began.

In fact, despite Prose's contention that the HUD monitor was biased against it, the record generally shows that there was a cordial, professional relationship between the HUD monitor and the Prose project manager. At the hearing, the monitor stated that he had "always considered [the relationship with the Prose project manager] a warm, friendly and enjoyable relationship" and that he "looked forward" to survey trips. (Tr. at 129.) The monitor further testified that while he sometimes found it difficult to communicate with the project manager--and at times, found that the project manager was asking for assistance on details of the contract which were to be left to the discretion of the REAMS contractor--such that the monitor conceded that his "tone of voice might sound curt" (Tr. at 130), he nevertheless overlooked and "[i]n general . . . was very tolerant" of such communication and performance difficulties because the HUD monitor "knew the [project manager] was trying [and] working hard." (Tr. at 147.) The HUD monitor testified that although he encountered minor performance deficiencies, he "took a very balanced kind of attitude towards it." (Tr. at 147.) The HUD monitor further testified that in the interest of maintaining good relations, and because he did not want to "generate aggravation" by going to the project manager's supervisors in New Hampshire, the HUD monitor did not cite the firm for certain performance problems. According to the HUD monitor, the problems were not severe enough to constitute "breach" and he "knew [the project manager] was a man of integrity, an honest person, and was trying the best that he could try, and if he couldn't do any better . . . at least [HUD] had an honest person out there" performing the Area C REAMS requirement. (Tr. at 151.)

The Prose project manager conceded at the hearing that a friendship existed between himself and the HUD monitor, and also admitted that the discussion about finding a new job probably arose out of friendship, not bias against Prose. (Tr. at 108.) While the project manager testified that on some days the HUD monitor was responsive to the project manager, yet on other days the monitor would "go into a tirade" and "would give a very indefinite answer," (Tr. at 69), such conduct does not establish bias against Prose.

Under these circumstances, where each of the alleged statements exhibiting bias has been reasonably explained as indicating something other than bias against Prose, and

where the HUD monitor proved to be a credible witness, we conclude that the declarations cited by Prose do not establish bias on the part of the HUD monitor against Prose.

Technical Evaluation

The record shows that the HUD monitor was initially designated as an alternate SEB member for this procurement; however, when one of the original voting SEB members was tasked to deal with a housing crisis and excused from the panel, the HUD monitor was reassigned to a voting position. Because Prose had expressed concern to the Philadelphia HUD office about the HUD monitor's role in serving on the SEB, the recused SEB member whom the HUD monitor replaced was later recalled by the agency to perform an independent evaluation of the Prose technical proposal. The original SEB member's evaluation of the Prose proposal was consistent with the SEB's evaluation.

Although the protester alleges that the HUD monitor's active role in the evaluation process prevented Prose from receiving contract award, the record does not support this contention. First, Country Manor's lower-priced BAFO received an evaluation score more than 50 percent higher than Prose's. Even if the scores assigned by the HUD monitor at issue were excluded from consideration, Country Manor's BAFO score would remain significantly higher. Further, the record shows that the areas in which Prose's technical proposal were downgraded were justified. For example, Prose received a low score for the construction maintenance portion of its proposal in part because the firm failed to provide a responsive sample repair specification for eight or more repair items, as requested by the RFP. In contrast, the awardee--Country Manor--provided eight

²The record also contains a letter written by Country Manor to the HUD monitor citing several properties which Country Manor complained had not been properly maintained by Prose. At the hearing, the HUD monitor explained that this letter reflects an oral complaint made to him by Country Manor. The HUD monitor stated that in accordance with standard HUD policy, he asked Country Manor to put its complaint in writing. (Tr. at 143 - 144.) We find this explanation credible and see no evidence to suggest that this letter was solicited as part of an effort to keep Prose from receiving the replacement contract for Area C.

³At the agency's request, our discussion of the proprietary details of both the Prose and Country Manor proposals and the corresponding technical evaluations are done in general terms.

detailed sample repair specifications, as directed by the RFP. With respect to a subfactor which called for a description of how subcontractor services would be coordinated and used, Prose's proposal was downgraded for providing a general, generic reference to an unexplained "system of subcontracting." In contrast, the awardee described the qualifications of its proposed subcontractors, and provided a list of these firms. Consequently, Country Manor reasonably received a higher technical score under this subfactor than Prose.

The evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden resulting from a defective evaluation. See Orion Research, Inc., B-253786, Oct. 21, 1993, 93-2 CPD ¶ 242. In cases challenging an agency's technical evaluation, our Office will not reevaluate the proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP. See Federal Micro Sys., Inc., B-251243, Mar. 18, 1993, 93-2 CPD ¶ 110. In this case, we have carefully scrutinized both the protester's and the awardee's proposals and the corresponding evaluation documentation and conclude that there is no evidence to suggest that Country Manor received contract award as a result of bias. Rather, as discussed above, we find that the awarded point scores reasonably reflect the technical distinctions between the awardee's and the protester's proposals.

The protest is denied.

Robert P. Murphy
General Counsel

⁴In fact, while the record shows that Prose was properly downgraded for various weaknesses in its proposal, the record also shows that in several categories, the HUD monitor accused of being biased against the protester actually awarded extra points to the protester's proposal as a result of his knowledge of the Prose project manager's capabilities. (Tr. at 221 - 222.)